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In The Supreme Court Of The United States

REGINALD WILKINSON, et al.,
Petitioners,

v.

CHARLES E. AUSTIN, et al.,
Respondents.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JOINT APPENDIX

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PETITION FOR WRIT OF CERTIORARI FILED: OCTOBER 8, 2003
CERTIORARI GRANTED: DECEMBER 10, 2004

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United States District Court
For The Northern District Of Ohio (Youngstown)
Civil Docket For Case #: 4:01-CV-01171-JG

Austin v. Wilkinson et al.

DOCKET ENTRIES

Filing Date	#	Docket Text
01/09/2001	1	Complaint for Declaratory Judgment and Injunctive Relief.
		* * *
03/30/2001	17	Answer to Complaint.
		* * *
04/09/2001	19	First Amended Complaint Adding New Parties.
04/09/2001	20	First Amended Complaint Adding New Party.
		* * *
05/10/2001	27	Answer to Amended Complaint
		* * *

02/25/2002	227	Opinion and Order signed by Judge James S. Gwin on 2/25/02 that the Court finds the plaintiff inmates have a liberty interest entitled to constitutional protection. Because of the length of placement in its severely restrictive conditions, incarceration at the OSP imposes an atypical and a significant hardship upon inmates. The defendants have violated the plaintiff class's right to due process by denying the plaintiffs adequate notice, adequate hearing, and sufficiently detailed decisions. Having found that the defendants violated, and will continue to violate, the plaintiffs' constitutionally protected liberty interest, the Court orders the parties to file, within fourteen days of the publication of this judgment, proposed injunctive orders, extending no further than necessary to correct the violation of the federal right set out in this opinion in a way that is the least intrusive means to correct the violation.
		* * *
03/26/2002	259	Order signed by Judge James S. Gwin on 3/26/02 previously the Court held that the defendants violated the plaintiff class's right to due process by denying the plaintiffs adequate notice, adequate hearings, and sufficiently detailed decisions

concerning their placement at the OSP. Because the defendants have violated the plaintiffs' constitutionally protected liberty interest, the Court orders the least intrusive means to correct the violation. The Court will retain jurisdiction over this matter for the purpose of enforcement. This injunction shall terminate in two years upon the motion of either party unless the Court finds that prospective relief is needed to correct an ongoing violation of a federal right.

03/26/2002	260	Judgment signed by Judge James S. Gwin on 3/26/02 that the Court has issued its injunctive order in the case. The defendants will submit proposed changes to Policy 111-07 in accordance with that order within thirty days for approval by the Court. This action is terminated under Rule 58 of the Federal Rules of Civil Procedure.

* * *

04/17/2002	268	Notice of Appeal to the USCA for the 6th Circuit from opinion and judgment dated March 26, 2002 filed by all defendants.

* * *

05/15/2002	284	Order signed by Judge James S. Gwin on 5/15/02 that having reviewed the defendants' proposed policy 111-07,

the plaintiffs' response to the policy, and the defendants' reply, the Court adopts the defendants' 4/24/02 proposed policy with the changes contained within this order.

* * *

07/12/2002	311	Order signed by Judge James S. Gwin on 7/12/02 denying defendants' motion seeking partial relief from judgment.

* * *

07/12/2002	313	Notice of Appeal to the USCA for the 6th Circuit from orders of May 15, 2002 (Doc. No. 284) and July 12, 2002 (Doc. No. 311) filed by all defendants.

* * *

12/23/2002	358	Motion for order to enforce Court's Orders of February 25, 2002, March 26, 2002, May 15, 2002, and July 12, 2002, filed by all plaintiffs.

* * *

05/15/2003	414	Order signed on 5/15/03 by Judge James S. Gwin. The Court grants the plaintiffs' motion to enforce in part and denies it in part. The Court finds that the defendants have violated parts of the Court's prior orders but it denies the plaintiffs' request for

- Adjustment/behavior after placement
- Interaction with others (staff and/or inmates)
- The offender recognizes and acknowledges factors contributing to the commission of the placement offense and nature
- Other Factors which indicate a risk of future violence

The committee will use professional correctional judgment to evaluate the inmate's likelihood to repeat prohibited actions. The privilege level review will be in a narrative form to record the factors considered by the evaluating employee. The inmate will appear before the Privilege Level Review Committee to ensure that he has the opportunity to have input into the process and respond to questions the committee may have during the review. The Privilege Level Review Committee will consist of a Unit staff member, a Custody staff member, and a Warden's designee. They may consult with any other staff person (Mental Health, Medical, Executive Staff, etc.) during the course of the review process.

G. Privilege Level Review for Level 4

Inmates placed in level 4 shall receive privilege level reviews during the time between annual supervision reviews. The annual supervision review procedures are more fully described below. The provisions of this section pertain only to privilege levels within the assigned security level.

Privilege level 4B is an entry level privilege status. Placement in 4B is for an indeterminate period. Inmates classified into Level 4B shall have an assessment

completed every six months. Inmates who are in privilege level 4B and have been reviewed pursuant to this subsection may be placed in privilege level 4A.

The inmate will appear before the committee to discuss and review the placement issues. The inmate shall have the opportunity to present information, express his objections and explain his current classification. The committee will advise the inmate of their expectations and any steps the inmate can take to improve his eligibility for reduction. The first assessment will take place six months after the initial placement, and will continue every six months thereafter.

The Privilege Level Review Committee will make a recommendation to the Warden/Designee to either continue the inmate in 4B or reduce him to 4A, supported by a written rationale. The Warden/Designee shall then render a decision based on the Committee's recommendation. This decision is not appeallable. The Privilege Level Review Committee may also recommend a special supervision level review if that is warranted, in their judgment. Such special reviews must be approved by an individual who could initiate such a placement and shall follow the procedures described for an annual supervision review, described below.

H. Privilege Level Review for Level 5

Inmates placed in level 5 shall receive level reviews during the time between annual supervision reviews. The annual supervision procedures are more fully described below. The provisions of this section pertain only to privilege levels within the assigned security level. Inmates classified into Level 5B shall have an

assessment completed every three months; inmates classified as Level 5A shall have an assessment completed every six months.

Placement in Level 5 is for an indeterminate period. Privilege level 5B is an entry level privilege status. Inmates who are in privilege level 5B and have been reviewed pursuant to this subsection may be placed in privilege level 5A.

The Privilege Level Review Committee will consist of three members, designated by the Warden/Designee, such as the inmate's Unit Manager, Case Manager (to comment on educational programming, and other programming), Mental Health staff, and/or a custody staff person.

The inmate will appear before the committee to discuss and review the placement issues. The inmate shall have the opportunity to present information, express his objections and explain his current classification. The committee will advise the inmate of their expectations and any steps the inmate can take to improve his eligibility for reduction. The first review for 5A inmates will take place six months after the initial placement, and will continue every six months thereafter. The first review for 5B inmates will take place three months after the initial placement, and will continue every three months thereafter.

At the annual (one-year) review a Privilege / Security Level Review, Level 5B, 5A & 4B Form (Form DRC2634, DRC2636) will be completed — regardless of the recommendation — affording the inmate the normal classification review and appeals process.

The Review Committee will make a recommendation to the Warden/Designee to either continue the inmate in 5B, or to reduce him to 5A, supported by a written rationale. The Warden/Designee shall then render a final decision based on the Committee's recommendation. This decision is not appeallable. The Privilege Level Review Committee may also recommend a special supervision level review if that is warranted, in their judgment. Such special reviews must be approved by an individual who could initiate such a placement and shall follow the procedures described for an annual supervision review, described below.

I. Annual Supervision Review:

All Level 4 and Level 5 inmates will have supervision reviews completed at least annually. The classification Committee shall consist of three members, which may include the Deputy Warden of Operations/Designee, the Unit Management Administrator, a Unit Manager, a Case Manager and/or other Unit Staff member and may include a Mental Health staff. All annual reviews must include a Director's designee to review all pertinent information and make a recommendation.

The inmate is to be served with a Notice of Hearing 48 hours prior to the hearing, and afforded the opportunity to appear before the entire committee, unless waived in writing, to offer any pertinent information, explanation and/or objections to Level 4 or 5 placement. The inmate will be afforded the opportunity to submit a written statement to the committee. The committee shall make a comprehensive review of the inmate's institutional

adjustment and behavior, including his behavior since placement in level 5 in order to make an assessment of the risk to safety and security posed by such an inmate.

This committee shall review the completed Privilege/ Security Level Review, Level 5B, 5A & 4B Form (DRC2634, DRC2636), and will take into consideration at a minimum the following information:

- Reason for placement in Level 4 or 5 and relevant circumstances;
- Conduct Reports;
- Current privilege level;
- Time served in current privilege level;
- Total time spent in level 5 and/or level 4;
- Time left to spend on current sentence;
- Time since last incident that resulted in inmate being designated level 5 or 4;
- Program Involvement;
- Behavior in the last five years, including prior to Level 4 or 5 classification;
- Security level prior to placement;
- Adjustment/behavior after placement;
- Factors which indicate a risk of future violence;
- Interaction with others (staff and/or inmates);
- Recognition and acknowledgment of the factors contributing to the commission of the placement offense and nature;
- The findings and recommendations of the previous assessment committees;
- Previous review committees;
- The findings and recommendations of all assessment committees subsequent to the placement in level 4 or level 5;
- The findings and recommendations of all supervision review committees subsequent to placement in level 4

or level 5;

The committee will use professional correctional judgment to evaluate the inmate's likelihood to repeat prohibited actions. The classification committee shall review the completed Privilege / Security Level Review, Level 5B, 5A & 4B Form and any other relevant information. The committee shall review and evaluate the factors listed above, the circumstances underlying the placement in Level 4 or 5, the reasons for initial placement, the inmate's subsequent actions and his demonstrated attitude. The committee shall determine whether there has been a diminishing of the inmate's risk to the safety of persons or institutional security, within their professional correctional judgment. The committee shall make a recommendation to reduce or continue the inmate's security level accordingly. The committee shall identify the basis for its decision and the factors relied upon. If the committee believes the inmate presents a threat to security of a general population institution, the committee shall document their conclusions as to the inmate's risk and their reasons.

The classification committee shall forward its recommendation to the Warden/Designee. The Warden/Designee shall review the Privilege / Security Level Review, Level 5B, 5A & 4B Form and all other information presented, and approve or disapprove the recommendation. If the warden approves the recommendation, he or she shall submit the recommendation and the approval to the Bureau of Classification for final disposition. The inmate shall be notified of the warden's approval of the recommendation and may file a formal objection to the

recommendations of the classification committee and warden with the Bureau of Classification within fifteen days of the date he is served with the committee's recommendation and warden's action.

The Bureau of Classification will review the recommendation and any objections filed by the inmate, and make a decision.

Security Designation Long Form: Form Nos. DRC2568, DRC2630, DRC2569
Supervision Review Forms: DRC2098, DRC2094, DRC2629, DRC2338
Notice of Hearing Form: DRC2598
Information Presented by the Inmate: DRC2627
Information Presented by Staff: DRC2628).
Classification Committee Report Level 5 Placement, DRC2637, DRC2638, DRC2639
Privilege / Security Level Review, Level 5B, 5A & 4B Form (Form DRC2634, DRC2636)

RECOMMENDED PRIVILEGE LEVELS FOR LEVELS 5 AND 4:

	Level 5B	Level 5A	Level 4B	Level 4A
Clothing	3 State Issue Uniforms	3 State Issue Uniforms	3 State Issue Uniforms	3 State Issue Uniforms
Privilege Level Review	3 Months	6 Months	6 Months	N/A
Classification Status Review	Annually	Annually	Annually	Annually
Phone Calls	One ten minute call per month. All others only by request of Attorney of Record or confirmed serious illness or death in the family	Two ten minute calls per month. All others only by Request of Attorney of Record or confirmed serious illness or death in the family. (Warden's Discretion)	One ten minute call per week. All others only by request of Attorney of Record or confirmed serious illness or death in the family (Warden's Discretion)	2 times per day

	(Warden's Discretion)			
Recreation	5 one-hour periods per week, inside or outside recreation areas.	5 one-hour periods per week; inside or outside recreation areas. Congregate recreation opportunity with at least one other inmate.	5 one-hour periods per week; inside or outside recreation pods. Congregate recreation with at least one other inmate.	Seven 1- ½ hour periods per week
Shaving	3 times per week	3 times per week	5 times per week	Any-time during the day.
Shower	5 times per week	5 times per week	5 times per week	Twice per day.
TV	State Issued or purchase from commissary. Programming only.	State Issued or purchase from commissary Programming and Network.	Network and Institutional programming provided on range TV. Movie rentals on weekends and holidays.	May have personal TV

Walkman	None	Walkman w/ AM/FM w/cassette player. No cassettes permitted. Battery operated.	Walkman/Cassette AM/ FM w/cassette player. Battery operated. Five (5) cassettes permitted.	Commissary Purchase or Approved vendor
Visits	Non-Contact, 2 visits per month, per visitor for up to 2.5 hours; Attorney of Record, Clergy of Record.	Non-Contact, 2 visits per month, per visitor for up to 3.5 hours, Attorney of Record, Clergy of Record.	Non-Contact, 2 visits per month, per visitor for up to 4 hours, Attorney of Record, Clergy of Record.	Contact, 2 visits per month per visitor for up to 7 hours.
Library/ Legal Service	Library: 3 paper-back books Legal: Per kite to Paralegal.	Library: 4 paperback books Legal: Per kite to Paralegal.	Library: 5 paperback books Legal: Per kite to paralegal.	Minimum 4 1/2 hours per week.
Program-ming	Broadcast over TVs provided in each cell Small group program-ming in program booths	Broadcast over TVs provided in each cell Small group programming in program booths	Broadcast over TVs provided on range. Small group counseling, no more than four inmates.	Broadcast over TVs; Small group counseling.

Commissary Spending Limit Twice Per Month	$30.00	$50.00	$70.00	$100.

(Petitioner's Note: forms associated with this policy were omitted; see R., Def. Ex. C.)